

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KIMANI MONTOYA,

Plaintiff,

v.

CONSUMER PORTFOLIO SERVICES, INC.,

Defendant.

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Case No. 12-13429

Honorable John Corbett O'Meara

**ORDER OF PARTIAL DISMISSAL**

Plaintiff Kimani Montoya filed a three-count complaint in this court August 8, 2012, alleging the following causes of action: Count I, violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227(b)(3)(B); Count II, violations of the Michigan Collection Practices Act ("MCPA"), Mich. Comp. Laws Ann. §§ 445.251 *et. seq.*; and Count III, injunctive relief under the TCPA.

Plaintiff has not established that the court has federal subject matter jurisdiction through diversity of citizenship. Although defendant Consumer Portfolio Services ("CPS") may be a California company, Plaintiff has failed to allege CPS's state of incorporation and principal place of business. See, 28 U.S.C. § 1332(c)(1). In addition, Plaintiff has alleged damages less than an amount in excess of \$75,000.00 as required by 28 U.S.C. § 1332(a).

The court does have subject matter jurisdiction over Counts I and III, as they present federal questions arising under the TCPA. However, this court declines to exercise supplemental jurisdiction over Plaintiff's state law claim in order to avoid jury confusion. See 28 U.S.C. §

1367(c); United Mine Workers v. Gibbs, 383 U.S. 715 (1966); and Padilla v. City of Saginaw, 867 F. Supp. 1309 (E.D. Mich. 1994).

Therefore, it is hereby **ORDERED** that Count II of the complaint is **DISMISSED**.

s/John Corbett O'Meara  
United States District Judge

Date: September 10, 2012

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 10, 2012, using the ECF system and/or ordinary mail.

s/William Barkholz  
Case Manager